

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By **CHAIRMAN JOAN ANDERSEN**, on February 5, 2003 at 3:12 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Joan Andersen, Chairman (R)
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)
Rep. Larry Lehman, Vice Chairman (R)
Rep. Norman Ballantyne (D)
Rep. Norma Bixby (D)
Rep. Gary Branae (D)
Rep. Nancy Fritz (D)
Rep. Carol Gibson (D)
Rep. Verdell Jackson (R)
Rep. Bob Lawson (R)
Rep. Clarice Schrupf (R)

Members Excused: Rep. Bob Lake (R)
Rep. Joe McKenney (R)

Members Absent: Rep. Pat Wagman (R)

Staff Present: Eddy McClure, Legislative Branch
Mari Prewett, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp in these minutes appears at the end of the content it refers to.

Committee Business Summary:

Hearing & Date Posted: HB 449, 1/27/2003; HB 459,
1/29/2003

Executive Action: None

HEARING ON HB 449

Sponsor: REP. TOM FACEY, HD 67, Missoula

Opening Statement by Sponsor:

REP. FACEY stated that HB 449 directs school districts to have policies in place that prohibit harassment, intimidation and bullying. He continued by directing the Committee to the bill and walking them through the various sections and what they would do. **REP. FACEY** then referred to the minimum policies that they want the board to adopt. He stated that they wanted the board to adopt a policy regarding hazing, bullying and harassment. He continued that they want there to be local control of these issues. **REP. FACEY** informed the Committee that the Office of Public Instruction was not involved in the bill. He stated that they were trying to use language that would give school districts wide variances.

REP. FACEY handed out a graph depicting "The Bullying Circle: Student's Modes of Reaction/Roles in an Acute Bullying Situation", attached as Exhibit 1. **REP. FACEY** went over the graph with the Committee and explained how bullying works. He continued by talking about relationships between students.

EXHIBIT (edh25a01)

REP. WAGMAN arrived at the Hearing.

Proponents' Testimony:

Betty Kijewski, Organizer for the Montana Human Rights Network, spoke in support of HB 449. **Ms. Kijewski** presented her written testimony, attached hereto as Exhibit 2. **Ms. Kijewski** informed the Committee of several statistics regarding HB 449. She provided the Committee with copies of this information, attached as Exhibit 3. **Ms. Kijewski** then referred to a handout concerning a survey she had done of several schools asking them about their bullying and harassment policies. A copy of that information is attached as Exhibit 4.

EXHIBIT (edh25a02)

EXHIBIT (edh25a03)

EXHIBIT (edh25a04)

REP. MCKENNEY arrived at the Hearing.

Chris Christiaens, Montana Chapter National Association of Social Workers, stated that they supported HB 449. He continued that social workers believe that everyone should have the opportunity to have a healthy thriving educational system in which they can fully appreciate the educational opportunities available to them. **Mr. Christiaens** further stated that the children should not have to put up with harassment from fellow students and others. **Mr. Christiaens** went on to say they felt that harassment was the cause of many minorities dropping out of school and felt that this bill would address the problem.

Sue Northup, Helena, spoke in support of HB 449. Ms. Northup presented her written testimony to the Committee; it is attached as Exhibit 5.

EXHIBIT (edh25a05)

Maggie Connor, stated that she encouraged the Committee to adopt HB 449. She went on by saying that she believed the bill would help to eliminate some of the tragic events that occur daily in the school system. **Ms. Connor** continued by saying that kids can be mean and need boundaries. She told the Committee of a personal incident regarding harassment involving her son.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 26.4}

Jennifer Hendricks, Helena, spoke in support of HB 449.

Linda Gryczan, Montana Women's Lobby, spoke in support of HB 449. Ms. Gryczan presented her written testimony to the Committee, attached as Exhibit 6.

EXHIBIT (edh25a06)

Aggy Lord, High School Student, Helena, stated she urged the Committee's support for HB 449.

Rachel Vielleux, Missoula County Superintendent of Schools, stated that she urged the Committee's support of the bill.

Brenda Wahler, stated that she was there on her own behalf and also as a parent and former school teacher and as a former recipient of bullying. **Ms. Wahler** continued saying that her daughter had also been bullied at Helena High and as a result had to go to an alternative program. **Ms. Wahler** went on to say that one of the things a policy could do would be to set standards for adults and set the standards that say that bullying is not acceptable behavior.

Jerry Scott, Carbon County Superintendent, stated that he would echo what the others had said prior to him. He continued by stating that he supported HB 449. **Mr. Scott** indicated that he believed that bullying leads to violence. He went on to talk about some personal experiences.

Beth Sacry, Public Policy Specialist, Montana Coalition Against Domestic and Sexual Violence, gave the Committee some background on this coalition. **Ms. Sacry** continued that the coalition strongly supported HB 449 as too often they end up helping folks that are victims of this kind of action. She went on to say that there was research that supports the fact that if you start modeling good behavior in youngsters they are less apt to take on violent attitudes and violent behavior as they grow up.

Scott Crichton, Executive Director, American Civil Liberties Union of Montana, he stated he was here to support the bill. He continued by saying that the law requires kids to be in school, therefore, he felt there should be a requirement to make sure that the schools are safe.

Opponents' Testimony:

Lance Melton, Montana School Boards Association, stated that if there was a way he could prevent or undo any of the harm done he would do so as would their members. He continued by saying that, with that said, the Association stood in opposition to HB 449.

Mr. Melton presented written testimony which is attached as Exhibit 7. Mr. Melton also presented the Committee with a copy of the Hazing/Harassment/Intimidation/Bullying/Menacing policy which school districts have. This policy is attached as Exhibit 8.

EXHIBIT (edh25a07)

EXHIBIT (edh25a08)

Gilda Clancy, Lobbyist, Montana Eagle Forum, stated that she was there in opposition to HB 449. Ms. Clancy presented her written testimony (Exhibit 9), and a copy of "The Golden Rule School" (Exhibit 10), which is a program that the Montana Eagle Forum supports.

EXHIBIT (edh25a09)

EXHIBIT (edh25a10)

Julie Millam, Executive Director, Montana Family Coalition, rose in opposition to HB 449. Ms. Millam present a copy of her

testimony to the Committee, attached hereto as Exhibit 11.

EXHIBIT (edh25a11)

Jenny Dodge, Citizen's Network, stated they oppose HB 449. Ms. Dodge presented a copy of her testimony to the Committee which is attached as Exhibit 12.

EXHIBIT (edh25a12)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 25.7}

Tei Nash, Coalition for Community Responsibility, Missoula, stated they believe that REP. FACEY should look at what is already in place in the Missoula school system and maybe the Missoula school system could be used as an example for the rest of the state. He continued by informing the Committee of policies in place and what they are. **Mr. Nash** went on to say that the problem was not the students, but that it was the parents. He advised the Committee that he opposed HB 449 and indicated his concern for the mention of sexual orientation which was included in the bill.

Gene Williams, stated he opposed HB 449. He continued by saying that he considered the bill repetitious because policies were already in place regarding bullying and harassment. **Mr. Williams** informed the Committee that he felt that there had always been bullies and there would continue to be bullies. He was concerned because he felt that academic excellence was taking second seat to this type of concern. **Mr. Williams** stated that he was in opposition to this bill or any bill that forwarded the agenda of the lesbian and gay lobby.

Harris Himes, Pastor, Big Sky Christian Center, Hamilton, spoke in opposition to HB 449. **Mr. Harris** expressed his opinions and what he believed to be the concerns of the other churches in his area. He continued by making reference to things that have happened in California because of the agenda of preaching safe. **Mr. Harris** continued by reading several excerpts from a magazine he had with him. He further discussed what he believes to be the fiscal impact of HB 449. **Mr. Harris** went on to talk about the gay rights activists which support this type of bill.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 24.9}

Informational Testimony:

Mike Barrett gave testimony to the Committee.

Questions from Committee Members and Responses:

REP. GALVIN-HALCRO asked Julie Millam if she did or had worked in a public school in Montana. **Ms. Millam** indicated that she had not.

REP. GALVIN-HALCRO asked Ms. Millam if she had children in a public school in Montana. **Ms. Millam** replied that she did not, that she had a child in a private school but that a one time her youngest had been in a public school.

REP. GALVIN-HALCRO asked Ms. Dodge if she had ever worked in a public school in the State of Montana. **Ms. Dodge** answered she had not.

REP. GALVIN-HALCRO asked Ms. Dodge if her children were in public school in the State of Montana. **Ms. Dodge** answered that they were not.

REP. GALVIN-HALCRO asked Betty Kijewski about her reference to Mr. Messinger in her survey regarding the fact that Helena High School was working on a new policy. **Ms. Kijewski** answered that it was not a survey it was just a contact asking the schools if they had specific antiharassment policies and if they would provide them to her. She continued that when she asked the question of the principal at Helena High she was told that they were in the process of working on a policy that had not been adopted or in place and were in transition on the issue. **Ms. Kijewski** stated that when she spoke to Mr. Messinger about a year ago or a little more, she was told that at that time they did not have a harassment policy in place.

REP. GALVIN-HALCRO asked REP. FACEY if he would give her specific information regarding the Chief Charlo School in Missoula. **REP. FACEY** stated that Chief Charlo was a K-5 school located on Hillview Way near 55th Street in the South Hills area.

REP. GIBSON asked Lance Melton if his organization opposed the Pledge of Allegiance policy that the Legislature set in 1997. **Mr. Melton** answered that they had, as well as the Eddy Eagle Program for gun safety in schools and any other bill that sought to mandate curriculum or adoption of a particular policy.

REP. GIBSON asked Lance Melton if the proposal being discussed would be more acceptable to him in the form of a resolution. **Mr. Melton** indicated that they prefer resolutions and explained his reasons for doing so.

REP. LEHMAN asked **REP. FACEY** about the section of the bill which includes a provision wherein a person could report an act of bullying or harassment anonymously and if he would foresee problems with that. **REP. FACEY** answered that they could be problems but that he felt that the next sentence in the bill would direct procedure for handling such a complaint.

REP. LEHMAN asked **REP. FACEY** if he would be open to an amendment to the bill. **REP. FACEY** stated he was open to suggestions for amendments.

REP. LEHMAN asked Harris Himes if he was a paid lobbyist for the churches he had stated he spoke for. **Mr. Himes** stated that he had used his words carefully stating that the opinion he expressed would be the same as those churches. He continued that he was not a formal representative of those churches.

REP. BIXBY asked Lance Melton about the recommended policy he had provided to the Committee and if he knew how many schools had adopted the policy, if any. **Mr. Melton** stated that the staff works daily with school districts in the adoption of policy. He continued that they put out quarterly updates and have done policy analysis and rewrites for approximately one hundred of the larger school districts in the State since 1997. **Mr. Melton** went on to say that he was not aware of any school that had indicated they did not want the policy included.

REP. WAGMAN asked Lance Melton to explain the process by which they adopt policy and where they obtain sample policies. **Mr. Melton** stated that their policies are available for inspection on line and that they put out an entire booklet related to a number of policies and gave some examples of those policies. He continued saying that the policies were adopted through the intensive and exhaustive process of public input from each community. **Mr. Melton** went on to say that what they typically recommend for school districts is that upon adoption of policy that they do a first, second and third reading to make sure that there is a consensus of agreement.

REP. WAGMAN asked Lance Melton if the Association or OPI advised school districts on law or potential liability that would compel the districts to adopt policy. **Mr. Melton** answered that they have a Legal Services Department and that they do advise school districts on how to stay out of trouble.

REP. MCKENNEY referred **REP. FACEY** to Page 1, new Section 2, Line 22 wherein it states: "a reasonable person should know will have the effect of harming a student. . ." and then on Line 25 it states: "has the effect of insulting or demeaning a student or

group of students in such a way as to disrupt or interfere with the school's educational mission of the student." He continued by stating that he sees that as having the intent of what is trying to be done. **REP. MCKENNEY** then referred **REP. FACEY** to Subsection 2, Line 27 which he stated he believes to be the problematic area of the opponents and wonders if this were amended out Subsection 2 if the intent would still be the same. **REP. FACEY** stated he felt it was important to keep that language in the bill as it is language that is being used for the abuse in some situations.

REP. FRITZ asked **REP. FACEY** if the language in the bill came out of the Safe Schools Grant that Missoula received. **REP. FACEY** stated he did not believe it did. He stated that not all of the language came from the Safe Schools, some of it came from other model language used around the country.

REP. FRITZ asked **REP. FACEY** if he would be willing to add an amendment to the new section such as: "School personnel should equally promote policies, activities, curriculum that encourages a safe and civil environment." **REP. FACEY** answered he felt it would be a welcome amendment.

REP. BRANAE asked Betty Kijewski if she would address for him her feelings on the sexual orientation clause and what effect it could have from her position and how the legislation might affect that. **Ms. Kijewski** answered that categories were listed in the bill because she felt it was important to name things when there is knowledge that discrimination or harassment exists. She continued by stating that in her research she had looked at what the Supreme Court had said about enumeration of categories. **Ms. Kijewski** shared the Supreme Court's reasoning by reading the meaning, "Enumeration is the essential device used to make the duty to not discriminate concrete and to provide guidance for those who must comply." She continued quoting, "We find nothing special in the protection, these are protections taken for granted by most people, either because they already have them or they do not need them."

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Ms. Kijewski continued addressing the phrase "sexual orientation." She stated that this generation has decided that this is the language they are going to use to abuse each other with. She went on to state that whether we like it or not there are gays and lesbians in the schools and they are being abused.

CHAIRMAN ANDERSEN asked Ms. Kijewski about her reference to the copy of Title IX she had received from Fromberg High school and if she had a copy of Title IX she could share with the Committee. **Ms. Kijewski** answered that she would get copies of her material to the Committee.

Closing by Sponsor:

REP. FACEY stated that the bill was presented with the intended consequences that the schools would be safer places for kids to learn. He continued that he felt the schools could be better especially regarding the safe issue. **REP. FACEY** addressed **REP. LEHMAN'S** question regarding anonymous complaints and stated that he felt that the anonymous complaints could help stop the harassment. He went on to say that the Legislative body tells school boards lots of things and that he believes this policy is needed and would help to make the schools safer.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 5.4}

HEARING ON HB 459

Sponsor: **REP. ROY BROWN, HD 14, Billings**

Opening Statement by Sponsor:

REP. BROWN stated that while there is increasing utilization in many areas of government services, K-12 public education system is not following that trend. **REP. BROWN** informed the Committee of the declining enrollment in the schools since 1995. He went on to say, that even though there are fewer students it does not affect the rising costs through federal mandates or the fixed costs which have been on the rise. **REP. BROWN** told the Committee that the Governor and the School Funding Study had looked at the issue and determined that a method of averaging the ANB over a three-year period would lessen the effect of the rising costs. **REP. BROWN** distributed copies of a handout from the School Funding Study, Exhibit 13 which shows their findings and recommendation for averaging the ANB across a three-year period. He went on to explain that the study averages both the increases and decreases in enrollment. It also indicates an exception if the increase were over six percent in one year. **REP. BROWN** then stated that this averaging would cost the State more money and that it would be funded by using some of the interest earnings from the Treasure State Endowment Program.

REP. BROWN presented copies of a proposed amendment to HB 459 to the Committee for their consideration, attached as Exhibit 14.

REP. BROWN explained the purpose of the amendment was to provide a safety net for increasing enrollment in the first year. After the first year there should be no problem.

EXHIBIT (edh25a13)

EXHIBIT (edh25a14)

Proponents' Testimony:

Tom Beck, Chief Policy Advisor, Governor Martz, stated that the Governor and Lt. Governor join **REP. BROWN** in presenting HB 459 to the Committee. **Mr. Beck** commented about the changes in the population and the affects on the schools. He went on stating that the schools are hit the hardest by the population changes. **Mr. Beck** pointed out that because Montana schools funding is tied directly to enrollment the schools are facing a crisis due to enrollment declines. **Mr. Beck** urged the Committee to support HB 259 so that Montana students can continue to receive a great education.

Kris Goss, Policy Advisor for Governor Martz, reiterated what **Mr. Beck** had already told the Committee. **Mr. Goss** stated that there had been an 11.5 percent drop in the number of students in Montana schools in the last eight years. He continued that this decline is having a direct impact on the quality of education in the schools because of the fixed costs. **Mr. Goss** explained that the loss of a few students does not decrease the costs of heat, lights or teachers. He remarked that when a school loses a student that student's ANB is reduced the next year making it difficult for the school districts to meet their expenses. **Mr. Goss** urged support of HB 459.

Opponents' Testimony:

Lance Melton, Montana School Boards Association, stated that they had concerns regarding HB 459 as there are significant flaws in the bill. **Mr. Melton** testified as to the Association's view regarding the bill. **Mr. Melton** supplied the Committee with written testimony attached as Exhibit 15. He also distributed the vote tally from SB 390 which was passed in 2001 and information for other states regarding declining enrollments and fixed costs, attached as Exhibits 16 and 17 respectively for informational purposes.

EXHIBIT (edh25a15)

EXHIBIT (edh25a16)

EXHIBIT (edh25a17)

{Tape: 3; Side: A; Approx. Time Counter: 5.4 - 27.8}

Jeff Weldon, Chief Legal Counsel, Office of Public Instruction (OPI), stated that the Superintendent's Office supports the base purposes underlying HB 459 which is to cushion the impact of declining enrollment on school districts. The concern is that although the bill would benefit districts with declining enrollments it could adversely affect districts with growing enrollments. **Mr. Weldon** referred to SB 92 which was being heard in the Senate Education Committee. SB 92 is also a three-year averaging bill and the Superintendent's belief is that it is a better bill in that it would benefit schools with declining enrollments without punishing schools with growing enrollments. **Mr. Weldon** pointed out to the Committee the savings to the State because of declining enrollments but the increase to taxpayers at the local level. **Mr. Weldon** provided the Committee with a list of school districts in Montana that are experiencing increases in their enrollment, attached as Exhibit 18.

EXHIBIT (edh25a18)

Terry Minow, MEA/MFT, informed the Committee that she was appearing in opposition to HB 459. **Ms. Minow** talked to the Committee about the Governor's Advisory Council Study on Declining Enrollment. She went on to say, that they felt that SB 92 more accurately reflects the findings of the Governor's Advisory Council.

Informational Testimony:

Amy Carlson, Governor's Budget Office, stated that she was available to answer questions from the Committee.

Questions from Committee Members and Responses:

REP. BRANAE asked Kris Goss how many schools would fall between the zero and six percent increase enrollment. **Mr. Goss** answered that they had not finished their research, therefore, he did not have an answer at this time. He informed the Committee he would have the information for them before they took executive action on the bill.

REP. LEHMAN asked Kathy Fabiano, Office of Public Instruction, if the proposal were to be enacted if it were true that the plan would not go into effect until 2005. **REP. LEHMAN** further asked if that was school year 2004-2005 or school year 2005-2006. **Ms. Fabiano** answered that the bill would be effective for school year 2005, one year after the coming school year as there would be

computer reprogramming to be done in order to calculate a district's three-year average ANB. She explained that if there was not enough time to put the plan into action for school year 2004.

REP. LEHMAN asked Kathy Fabiano if that meant that if the plan would not go into effect in July 2003, it would become effective fiscal year 2004. **Ms. Fabiano** answered that the plan would go into effect July 2004 which would be fiscal year 2005.

CHAIRMAN ANDERSEN asked Lance Melton if it was his perception that small schools could opt in and out of the declining enrollment averaging, or if they were in it, would they be in the program for three years. **Mr. Melton** pointed out that his preference would be that if a district were in a state of decline it would be able to use the average.

Closing by Sponsor:

REP. ROY BROWN stated he felt that this was a serious situation and declining enrollment is hurting the schools. He continued by saying that if you average down you must also average up with the exception of school districts with sharp increases. **REP. BROWN** talked about plans in other states. He pointed out that he felt the State should do what it could afford. He went on to say, that the State could afford this program and it would solve the problem. **REP. BROWN** urged the Committee to support HB 459.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 11.5}

EXECUTIVE ACTION ON HB 400

Motion: **REP. GALVIN-HALCRO** moved that **HB 400 DO PASS.**

Motion: **REP. WAGMAN** moved that **THE AMENDMENTS TO HB 400 DO PASS.**

Discussion:

Eddye McClure, Legislative Services, explained the amendments to the Committee attached hereto as Exhibit 19.

EXHIBIT (edh25a19)

REP. LEHMAN stated he was not clear on the bill and not ready to vote.

REP. WAGMAN withdrew his motion on the Amendments.

REP. GALVIN-HALCRO withdrew her motion of DO PASS on HB 400.

Motion: **REP. LAKE** moved that **HB 400 BE TABLED.**

Vote: Motion failed 2-10 with REPS. **LEHMAN** and **LAKE** voting yes by roll call vote.

REP. LAWSON announced that the Subcommittee for HB 302 will meet at noon on Friday, February 7, 2003, in Room 137.

{Tape: 3; Side: B; Approx. Time Counter: 11.5 - 20}

ADJOURNMENT

Adjournment: 5:35 P.M.

REP. JOAN ANDERSEN, Chairman

MARI PREWETT, Secretary

JA/MP

EXHIBIT (edh25aad)